Supreme Court, U.S.
FILED
MAR 12 1990
JOSEPH F. SAPNIOL, JR.
CLERK

NO. 89-1030

IN THE

Supreme Court of the United States

October Term, 1989

GWENDOLYN BROWN,

Petitioner,

vs.

JAMES G. LEDBETTER,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITIONER'S REPLY BRIEF

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TABLE OF AUTHORITIES

I. Cases

Baliles v. Virginia Hospital Ass'n., No. 88-2043 (argued Jan. 9, 1990) 9, 10

Bennett v. White, 865 F.2d 1395 (3d Cir.) cert. denied on other grounds, ____ U.S. ____, 109 S.Ct. 3247 (1989) . . . 12

Cort v. Ash, 422 U.S. 66 (1975). . 1

Golden State Transit Corp. v. City of Los Angeles, 475 U.S. 608 (1986) (Golden Gate I) 4

Golden State Transit Corp. v. City of Los Angeles, ___ U.S. ___, 110 S. Ct. 444 (1989) (Golden State II) . . Passim

Pennhurst State School and Hospital v. Halderman, 451 U.S. 1 (1981). 5

Wehunt v. Ledbetter 875 F.2d 1558, 1562 . . . . (11th Cir. 1989) 2, 7

Wright [v. Roanoke Redevelopment and Housing Authority], 479 U.S. [418] at 432 110 S. Ct. 5, 7

II. **Statutes**

42 U.S.C. § 602(a)(27) 2

42 U.S.C. § 651, et seq. 2

42 U.S.C. § 1396, et seq. 10

42 U.S.C. § 1983 . . . . . Passim

42 U.S.C. § 601, et seq.
(Title IV-A) 2, 8

42 U.S. § 651, et seq.
(Title IV-D) 2

National Labor Relatiions Act . . 4

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PETITIONER'S REPLY BRIEF

I. This Court should resolve the confusion reflected in the Eleventh Circuit's reliance on Cort v. Ash to determine the existence of a "right...secured by the...laws" within the meaning of 42 U.S.C. § 1983.

Petitioner Gwendolyn Brown seeks to enforce a statutory and regulatory scheme which requires Respondent Ledbetter to establish and operate a system which provides timely and adequate child support recovery and

paternity establishment services to her and other Georgia families. See, Wehunt v. Ledbetter, 875 F.2d 1558, 1562 (11th Cir. 1989) (plaintiffs sought redress for the "systematic failure to (1) implement and operate a statewide child support enforcement program" which supplied adequate and timely services in compliance with federal statute and regulations).

Petitioner's claim was not grounded on an asserted individual right to receive a specific set of services for her, but was and is rather a claim to have available to her a state system of timely, adequate, and valuable services as required under Titles IV-A and IV-D of the Social Security Act, 42 U.S.C. §§ 602(a)(27) and 651 et seq. (1984). She alleged Respondent Ledbetter's child support recovery system did not do so. Respondents have each mischaracterized the nature of Petitioner Brown's claim in this case. (Resp. Sullivan's brief at 11-12; Resp. Ledbetter's

brief at 6).

Properly understood, it is clear that Petitioner's claim is not moot, as Respondent Sullivan acknowledges. Nothing currently in the record of this case suggests that Petitioner has ever received any services, let alone ongoing adequate and timely child support services. The right which Petitioner asserts -- the right to the range of child support and paternity establishment services which federal law mandates Respondent Ledbetter make available to her -- is an ongoing one, not satisfied by the voluntary provision of services by Respondent Ledbetter at a specific moment in time. Respondent Sullivan admits as much. Response, p. 8 n.7. Furthermore, Petitioner of course has an ongoing interest in the rights of the class she sought to represent.

This Court has recently decided another case which adds to the test for deciding a claim of rights enforceable under § 1983. In

Golden State Transit Corp. v. City of Los Angeles, ___ U.S. ___, 110 S. Ct. 444 (1989) (Golden State II), the Court found rights enforceable under § 1983 in the National Labor Relations Act (NLRA). Significantly, the Court prefaced its analysis by emphasizing the broadly remedial purpose of § 1983 for "official violation of federally protected rights", Id. at 448; see also 452), and that "[t]he burden to demonstrate that Congress has expressly withdrawn the remedy is on the defendant." Id. at 449.

Golden State Transit Corp. v. City of Los Angeles, 475 U.S. 608 (1986) (Golden State I), held that a city could not condition renewal of a cab franchise on the cab company's settlement of a strike. In the NLRA, Congress preempted the area of labor-management relations, and in particular, established a certain "free zone" of conduct, including the collective bargaining process, in which governments may not interfere. In Golden State

II, the Court held that the company could sue the city under § 1983 for compensatory damages for violation of the company's federal right to a collective bargaining process free of government interference, even though that right was not explicitly set out in the NLRA.

The Court said "...the availability of the § 1983 remedy turns on whether the statute, by its terms or as interpreted, creates obligations 'sufficiently specific and definite' to be within 'the competence of the judiciary to enforce,' Wright [v. Roanoke Redevelopment and Housing Authority], 479 U.S. [418] at 432, is intended to benefit the putative plaintiff, and is not foreclosed...", citing Pennhurst State School and Hospital v. Halderman, 451 U.S. 1 (1981), and Wright. 110 S. Ct. at 449.

Golden State II finds another source of right, beyond the terms of the statute, which were the focus in Pennhurst and Wright, and holds that the Congressional purpose behind

the particular language, structure, and history of a statute can create rights. The Court said, "The violation of a federal right that has been found to be implicit in a statute's language and structure is as much a 'direct violation' of a right as is the violation of a right that is clearly set forth in the text of the statute." 110 S.Ct. at 451. The Court found that participants in the collective bargaining process were intended beneficiaries of the statutory scheme. Notably, whether the scheme would inure to the benefit or detriment of the particular plaintiffs in Golden State was unknown to Congress and irrelevant; nevertheless, they were held to be "intended beneficiaries" of the scheme sufficient to be entitled to recover damages for its infringement. In the instant case, of course, Petitioner seeks no money damages, but simply access to the scheme of benefits and services which Congress created for her. Moreover, the legislative

history of the child support recovery program is replete with indications that the families are intended beneficiaries of the services, see, e.g., Wehunt, 875 F.2d at 1573 (Clark, J., dissenting) - an expression of Congressional intent analogous to the benefit the parties to collective bargaining found in the NLRA.

The other inquiry in Golden State II, was whether, as quoted earlier, the statute's obligations were "'sufficiently specific and definite' to be within 'the competence of the judiciary to enforce,'" citing Wright. In the instant case, Petitioner relies directly on the language of the statute, which imposes specific duties on Respondent Ledbetter, conditioning federal financial participation on compliance with those duties.

Golden State II's reference to the judicial history and the legislative intent behind a statute offers additional help to a court considering the enforceability of

federal statutes. This approach is particularly helpful in the instant case, as Title IV-A of the Social Security Act, 42 U.S.C. § 601 et seq., has been repeatedly held by this Court to create enforceable rights in those who are recipients of services and benefits thereunder.

Significantly, neither Respondent addresses the elements of the "enforceable rights" test derived from the cases discussed above. Respondent Sullivan continues simply to insist that the governmental treasuries are the beneficiaries of the child support recovery program, and that to allow Petitioner to enforce a claimed right to a program of services would "frustrate accomplishment of their statutory objective." (Br. at p. 11 n.11). If the program were accomplishing its statutory objective - establishing paternities and recovering child support - presumably it would not be in litigation. But Respondent Sullivan's distaste for litigation is simply

not part of the test for determining whether the Petitioner has enforceable rights in this statute.

Respondent Ledbetter's approach is even less illuminating. On page 10 of his Brief in Opposition he simply states "the court must consider whether the Plaintiffs...have sufficient rights...to create rights enforceable..." Such a circular statement fails to assist a court in construing a statute claimed to create rights.

Golden State II's explicit hospitality to § 1983 claims underscores the importance of the issue presented in the instant case, and why this Court should accept certiorari to further articulate the appropriate test for determining the enforceability of rights created by federal statutes. This Court's interest in this issue is reflected not only in Golden State II, but also Baliles v. Virginia Hospital Ass'n., No. 88-2043 (argued Jan. 9, 1990). Each of those cases differs

from this case, however: in Golden State II the Court found enforceable rights implicit in the language, structure, and history of statute, notwithstanding the statute's silence on the specific point; in Baliles, the issue is whether a provider of medical services - not the principle beneficiary under the statute - has enforceable rights under the Medicaid program, 42 U.S.C. § 1396 et seq. This Court needs to articulate how the test is applied to a case like the instant one, where the claim of right is made by a principal beneficiary of the statute, based on specific and definite statutory obligations compliance with which is a condition of federal financial participation, and where previous decisions have held the statute enforceable under § 1983.

II. This Court should hold that the lower courts erred in dismissing, without addressing, Petitioner's claim that she was deprived of property without due process when

the state failed to take action to enforce the rights to child support which she had assigned to it.

Both Respondents misunderstand the nature of Petitioner's constitutional claim. Petitioner's property rights do not "stem solely from the statutes upon which she relies". (Respondent Ledbetter's Brief, p. 16, Respondent Sullivan's Brief, p. 13). Rather, her property rights lie in (1) her right to recover child support from the absent parent of her children, a right created by the state court order establishing the obligation to pay child support, and (2) the right of her out-of-wedlock child to have a judicial determination of paternity. When she assigns those rights to the state, as she is required to do in order to receive Aid to Families with Dependent Children, the state must have an obligation not to arbitrarily deprive her of those rights by failing to act to enforce them in her stead. Respondent Ledbetter's failure

to operate a child support recovery program which makes reasonable efforts to enforce her assigned rights deprives her of those valuable rights. Of course, if they were enforced, she would presumably stand to gain by way of the "$50.00 disregard" and the "fill-the-gap budgeting," but those benefits are not the property interest at issue in Petitioner's constitutional claim.

While the holding in Bennett v. White, 865 F.2d 1395 (3d Cir.), cert. denied on other grounds, ___ U.S. ___, 109 S.Ct. 3247 (1989), is consistent with this analysis, it is not totally coextensive with the right asserted by Petitioner here. Neither lower court, however, addressed this issue, and Petitioner seeks to have this Court either order them to do so or determine the issue itself.

Therefore, it is respectfully submitted that the Petition for Certiorari should be granted.

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